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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1998

Addendum

KYRGYZSTAN

[9 February 1999]

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Articles 1 and 2

1. The fundamental legal rules, from which, it goes without saying, there derive the prohibition and preclusion of torture and other cruel, inhuman or degrading treatment or punishment, are contained in the Constitution of the Kyrgyz Republic. More specifically, articles 15 to 18 of the Constitution provide as follows:

"Article 15

1. In the Kyrgyz Republic, the dignity of the individual shall be absolute and inviolable.

2. The fundamental human rights and freedoms shall belong to everyone from birth. They shall be recognized as absolute and inalienable and protected by the law and the courts against infringement by any person whatever.

...

4. Human rights and freedoms shall be valid in the Kyrgyz Republic. They shall determine the intent, content and application of laws; their observance shall be mandatory for the legislative and executive authorities and for local self-government, and they shall be guaranteed by the judicial system.

...

"Article 16

1. In the Kyrgyz Republic, the fundamental human rights and freedoms shall be recognized and guaranteed in accordance with the universally-recognized principles and rules of international law and the inter-State treaties and agreements on human rights ratified by the Republic.

...

"Article 17

1. No laws shall be promulgated in the Kyrgyz Republic that abrogate or diminish human rights or freedoms.

2. Restrictions on the exercise of human rights and freedoms shall be allowed by the Constitution and laws of the Kyrgyz Republic only for the purposes of safeguarding the rights and freedoms of others, ensuring public safety or protecting the constitutional order. In such instances, the essence of the constitutional rights and freedoms shall remain untouched.

"Article 18

1. Restrictions on the physical and moral inviolability of the person shall be permissible only on the basis of law and sentencing by a court to punishment for a crime. No one may be subjected to torture, systematic or brutal violence or inhuman or degrading punishment.

2. Medical, biological and psychological experimentation on people without the duly expressed and certified voluntary agreement of the person on whom the experiment is to be conducted shall be prohibited.

3. No one may be subjected to arrest or detention except on the grounds of law. All acts tending towards the placing of responsibility for a crime on a person prior to the pronouncement of a verdict by a court shall be prohibited and shall be grounds for compensation to the victim through the courts for the material or moral injury suffered.

4. The death penalty may be imposed only in exceptional cases and by verdict of a court.

Everyone sentenced to death shall have the right to appeal for pardon."

2. The Constitution provides that the Kyrgyz State and all its organs shall act on the basis of observance of the rule of law and shall ensure the preservation of law and order, the interests of society and citizens' rights and freedoms. Respect for the individual and preservation of citizens' rights and freedoms are mandatory for State organs, social organizations and officials.

3. By law, the full, unconditional and immediate protection of citizens' rights and freedoms, the suppression of offences in this sphere and the restoration of the situation existing prior to the offence are mandatory for the State and all its organs and officials.

4. The Constitution guarantees protection by the courts of all citizens' rights and freedoms that are enshrined in itself or other laws. Citizens are guaranteed inviolability of the person, domicile and private life and confidentiality of correspondence, telephone conversations and telegraphic communications. They are entitled to file complaints about the actions of officials or State or public bodies. Such complaints must be examined according to the procedure and within the time limits laid down by law. Acts by officials that constitute a breach of the law or an abuse of authority or infringe citizens' rights may be protested in the manner provided for by law.

5. On the basis of the above-mentioned provisions of the Constitution, specific rules in criminal law, the law of criminal procedure, corrective-labour law and other types of law contain a direct prohibition of cruel or degrading types of treatment or punishment.

6. There is no definition of torture in the Criminal Code of the Kyrgyz Republic. However, section VII, chapter 16, article 111 (Crimes against the person) sets the penalty for systematic or brutal violence, including such behaviour with the use of torture, which is punishable by deprivation of liberty for a period of from three to seven years.

7. Article 21 of the Code of Criminal Procedure of the Kyrgyz Republic prohibits the use of violence, threats or other illegal measures to obtain testimony from the accused or other persons in the investigation or hearing of criminal cases. Article 325 of the Criminal Code provides that officials may be held criminally liable for coercion to testify by means of threats, violence, boarding of a person being questioned or other unlawful acts. In addition, it is also a criminal offence for an official to exploit his position in a manner contrary to the interests of the service if that results in substantial infringement of citizens' rights or lawful interests (Criminal Code, art. 304) and a criminal offence for an official to perform acts clearly exceeding his competence that result in substantial infringement of citizens' rights or lawful interests (ibid., art. 305).

8. Persons suspected or accused of a crime may, when the legally defined grounds therefor exist, be held in custody for specified periods pending a decision by a court. The procedure for such detention is governed by: Section 9 of the Code of Criminal Procedure; the Regulations on short-term detention of persons suspected of a crime, and the Regulations on remand in custody. Those instruments contain no provisions whatever permitting humiliation or degradation either of short-term detainees or of remand prisoners. For example, article 15 of the Regulations on remand in custody, which defines the punishments applicable to remand prisoners for breaches of the rules of their places of detention, specially emphasizes that no use may be made in such punishment of measures having as their purpose the causing of physical suffering or the degrading of the individual.

9. In setting out the purposes of punishment for crimes, article 41 of the Criminal Code makes clear that the causing of physical suffering or the degrading of the individual are not among them. The types of punishment provided for, and the procedures for their execution laid down in the Criminal Code lead to the same conclusions.

10. Regarding the execution of punishment, limitations on the physical and mental inviolability of the person are permitted only on the grounds of law and of judicial sentence.

11. Although the Code of Criminal Procedure contains no definition of torture and consequently contains no rules on how torture should be prevented in trials or colonies or other forms of prison, article 12 of this Code does provide that no one may be detained otherwise than by judicial decision or with the sanction of a procurator.

12. In setting forth the purposes and objectives of criminal penalties for crimes, article 2 of the Criminal Code states that punishment has as its purposes the prevention of crime and the protection of the individual, of citizens' rights and freedoms, of juridical persons, of property and of the social and constitutional order of the Kyrgyz Republic. Article 41 of the

Criminal Code provides that punishment shall be employed for the purposes of restoring social justice, re-educating criminals and preventing the commission of other crimes, whether by convicted persons or by other parties. Furthermore, article 41, part 3, of the Criminal Code and article 1 of the corrective-labour legislation provide that punishment shall not have as its purpose the causing of physical suffering or the degrading of the individual.

13. Hence, the principles and rules set out in the Constitution and in the criminal, criminal-procedure and corrective-labour law of the Kyrgyz Republic regarding the treatment of persons held to criminal account, accused persons, persons standing trial or convicted persons serve in theory and in practice as guarantees of protection against infringement of such persons' rights during criminal proceedings.

14. There is nothing in law which prevents reference to the provisions of the Convention or of other valid international agreements in courts or other judicial or administrative entities. The provisions of the Convention are applicable in the Republic through the implementation of the legal rules that embody them. Under articles 5 and 6 of the Criminal Code, everyone who commits a crime within Kyrgyzstan (with the exception of persons who enjoy diplomatic immunity) is liable under the criminal laws in force at the time of commission of the offence.

15. Persons serving a sentence have, with a few restrictions, the obligations and rights laid down by law for citizens of the Kyrgyz Republic. Their legal rights and interests are safeguarded by a set of political and legal guarantees monitored by the Procurator's Office.

16. As part of the preparations for judicial reform, proposals are being made for the application to the staff of law-enforcement organs of more stringent requirements as to professional and legal knowledge, it being felt that such persons are sometimes unaware of the prohibitions under discussion in this report. Steps are being taken to rid law-enforcement organs of people responsible for unlawful methods of crime investigation. A section of the Procurator's Office is examining issues relating to the rehabilitation of victims of the repression during the period of the cult of personality. The results of this work are being published in the press.

17. Depending on the nature of their offence, persons guilty of cruel, inhuman or degrading treatment may incur criminal, administrative or disciplinary liability.

18. Appeals by citizens to State or social bodies constitute an important form of exercise and protection of the rights of the individual. Citizens claiming to have been the victims of unlawful acts by public officials of the kinds referred to in article 1, paragraph 1, of the Convention are entitled to submit a complaint to that effect to the Procurator's Office. That body is required by article 5 of the Procurator's Office of the Kyrgyz Republic Act and article 97 of the Code of Criminal Procedure to examine the complaint within three days and, if it appears that the official's conduct constituted a crime, to open criminal proceedings and investigate the matter itself or entrust the investigation to a pre-trial investigator and, should it be found that an unlawful act was committed, to submit the case to a court. The court

will then examine the case and pronounce on the accused person's guilt and the penalty. Should evidence of cruel treatment by an official come to light during judicial proceedings, the court concerned will pass on the relevant material for examination and a decision as to the holding of a trial. Victims of cruel treatment may appeal actions and decisions of a procurator or court to a higher procurator or court.

19. Article 1 of the Procedure for the Examination of Citizens' Proposals, Petitions and Complaints Act makes it obligatory for all State bodies to secure to citizens, in accordance with the Constitution and the law, their right to submit to State, social and other bodies, enterprises, organizations or institutions in writing or orally proposals for the improvement of their work and petitions and complaints about officials' conduct. The entities, their heads and other officials within the limits of their authority are obliged to accept the submissions and to examine them, respond to them and take the necessary measures in the manner and within the time limits specified in the Act itself and other legislation.

20. Also noteworthy is the guarantee of the right of persons subjected to any form of deprivation of liberty to protest any unlawful acts in their regard. The law provides that complaints, petitions and letters addressed by such persons to a procurator are not subject to inspection and must be forwarded to the addressee within 24 hours (Corrective-labour Code, art. 50; Regulations on remand in custody, art. 13; Code of Criminal Procedure, art. 437). It must also be emphasized that, when there is evidence of acts that come under the definition of torture, criminal proceedings can be opened by the competent bodies whether or not there is a complaint from the victims.

21. Kyrgyz law contains no provisions to the effect that torture may be employed in exceptional circumstances. Under Kyrgyz law, an order from a senior official or a State authority may not be invoked as justification for torture.

Article 3

22. In accordance with article 20 of the Constitution, the State grants aliens the right of asylum on the grounds of human rights violations. Naturally, such persons cannot be expelled, returned or extradited to any other State. There exist between the Kyrgyz Republic and a number of other countries agreements on judicial assistance that also deal with extradition.

23. Pursuant to article 80 of the Commonwealth of Independent States (CIS) Convention on Judicial Assistance and Judicial Relations in Civil, Family and Criminal Cases of 22 January 1993, questions of extradition and prosecution are dealt with by the contracting parties' procurators-general. The Convention defines the grounds for refusal.

24. Bilateral treaties between the Kyrgyz Republic and other States, particularly the Extradition Treaty between the Kyrgyz Republic and the People's Republic of China, provide for refusal to extradite a criminal if he has been granted asylum or extraditing him would be inhumane.

25. A number of cooperation agreements between the Kyrgyz Ministry of Internal Affairs and other States within the CIS (particularly Tajikistan) provide that a State receiving an extradition request may refuse it if it believes that acceptance will result in human rights violations.

26. The Kyrgyz Republic is a party to the Convention relating to the Status of Refugees and to the Protocol of 6 January 1997 relating to the same topic.

27. Pursuant to the Citizenship Act, citizens of the Kyrgyz Republic may not be extradited to other States unless provision is made therefor in international agreements.

Article 4

28. Officials and other persons who extort evidence may be held criminally liable under articles 305 and 325 of the Criminal Code of the Kyrgyz Republic. The penalties provided for this type of offence are, on the whole, quite severe. For example, action ultra vires, i.e. the deliberate commission by an official of acts that clearly exceed his competence and result in substantial infringement of citizens' rights and lawful interests, is, if it is accompanied by the use of physical force or the threat of such use, occasions serious consequences or involves the use of a weapon or special devices, punishable by the deprivation of liberty for between four and eight years, with or without confiscation of property, and with the loss of the right to occupy official positions (Criminal Code, art. 305).

29. Unlike its predecessor, the 1961 Criminal Code, the current Kyrgyz Criminal Code, which came into force on 1 January 1998, contains new qualifications and stiffer penalties for offences such as beatings, systematic or brutal violence, abuse of an official position, exceeding of official powers and extortion of testimony. For example, article 177 (Abuse of authority or official position) of the earlier Criminal Code provided for punishment by deprivation of freedom for up to three years or corrective labour for up to two years or dismissal. The corresponding provision of the new Code, article 304 (Abuse of official position) provides for punishment by a fine equivalent to between 100 and 200 times the minimum monthly wage or by deprivation of liberty for between three and five years with or without confiscation of property.

30. Under the old Code, abuse of authority or official position was punishable by deprivation of liberty for between two and eight years if it led to serious consequences. The new Criminal Code qualifies the offence of abuse of official position differently. Hence, such abuse is, if committed with a view to the benefit or advantage of the offender or other persons or with some other personal interest in mind, punishable by a fine equivalent to between 200 and 500 times the minimum monthly wage or by deprivation of liberty for between three and six years with or without confiscation of property. If the abuse causes serious injury and is committed in the interests of an organized group or criminal gang by an official occupying a senior position, it is punishable by deprivation of liberty for between five and eight years with or without confiscation of property. Lastly, the qualification of the offence that appeared in article 177 of the old Criminal Code reads in article 304 of the new Code as follows: "The acts referred to in the second and third parts

of the present article shall, if committed repeatedly or if they result in serious consequences, be punishable by deprivation of liberty for between 8 and 15 years together with confiscation of property".

31. A similar situation obtains concerning article 305 (Exceeding of official powers) of the new Criminal Code. Article 178 (Exceeding of authority or official powers) of the old Code provided for punishment by deprivation of liberty for up to five years or corrective labour for up to two years. The offence referred to in article 305 of the new Code is punishable by a fine equivalent to between 100 and 200 times the minimum wage or by the withdrawal for up to five years of the right to occupy official positions or engage in specified activity or by deprivation of liberty for up to four years. Under article 178 of the old Code, abuse of authority or official powers was, if accompanied by violence or the use of a weapon, punishable by deprivation of liberty for between two and eight years. Article 305 of the new Code provides that if it:

(i) Is committed in the interests of an organized group or criminal gang, or

(ii) Is committed by an official occupying a senior position, or

(iii) Is committed with the use or threat of the use of physical violence, or

(iv) Is committed with the use of a weapon or special devices, or

(v) Occasions serious consequences,

the offence of exceeding of official powers is punishable by deprivation of liberty for between four and eight years with or without confiscation of property and by the withdrawal for up to three years of the right to occupy specified positions or engage in specified activity.

32. Regarding coercion to testify, in the old Criminal Code, article 186 (Coercion to testify) provided for punishment in the form of deprivation of liberty for up to two years or corrective labour for the same period or dismissal. In the new Code, article 325 (Coercion to testify) provides for a penalty of deprivation of liberty for up to two years. Article 186 of the old Code further provided that if the offence was committed with the use of violence or insults against the person being questioned, the penalty would be deprivation of liberty for between two and seven years. Article 325 of the new Criminal Code admits of two qualifying circumstances. Firstly, it states that if the offence is committed with the use of violence or insults against the person being questioned, it will be punishable by deprivation of liberty for between two and eight years. Secondly, it provides that: "The acts referred to in the first and second parts of the present article shall, if they result in serious consequences, be punishable by deprivation of liberty for between 7 and 12 years".

33. Persons who extort testimony may, in addition, be held criminally liable under the following articles of the Criminal Code:

Article 110 (Beatings)

"Beating or the commission of other violent acts that cause physical pain, but not the consequences referred to in article 112 of the present Code, shall be punishable by a fine equivalent to 30 times the minimum monthly wage or by detention for up to three months."

Article 111 (Brutal or systematic violence)

"(1) The causing of physical or mental suffering by means of systematic beating or other violent acts shall, if it does not occasion the consequences referred to in articles 104 and 105 of the present Code, be punishable by deprivation of liberty for up to three years.

(2) The above offence, if committed:

Against two or more persons;

Against a person or that person's relatives in connection with the person's official activity or performance of a public duty;

Against a woman whom the offender knows to be pregnant;

Against a person known by the offender to be a minor or incompetent or financially or otherwise dependent on the offender or against a kidnap victim or hostage;

With the use of torture;

By a group of persons;

By a group of persons on the basis of a prior conspiracy;

By an organized gang;

For hire,

shall be punishable by deprivation of liberty for a period of between three and seven years."

34. The following articles of the Criminal Code apply to persons who attempt to commit a crime or take part in the commission of a crime (organizers, instigators, accomplices):

Article 26 (Liability for an uncompleted crime)

"(3) Criminal liability for an uncompleted crime shall arise according to the article of the present Code providing for liability for completed crimes, reference being had to articles 27 and 28 of the present Code."

Article 28 (Attempted crime)

"'Attempted crime' means action or inaction performed with the direct intention of committing a crime in instances in which, for reasons beyond a person's control, the crime is not carried through to its conclusion."

Article 30 (Complicity in crime)

"(1) 'Complicity in crime' means deliberate joint participation by two or more persons in the commission of an intentional crime.

...

(7) The liability of an organizer, instigator or accomplice shall arise in accordance with the same article of the Special Part of the Criminal Code as the liability of a perpetrator, reference being had to that article."

35. In 1997, courts in the Kyrgyz Republic tried the following two criminal cases:

(a) On 4 March 1997, the Talas oblast court sentenced Kamchybek Zhanchoroevich Konushbaev, a divisional inspector of the Talas District Department of Internal Affairs, to three years' deprivation of liberty under article 178, part 2, of the Criminal Code, suspended for two years in accordance with article 40 of the Criminal Code, for having on 9 October 1995, while in a state of intoxication, beaten a Mr. A. Toktobolotov while the latter was being questioned on suspicion of theft. As a result of the beating, Mr. Toktobolotov suffered bodily harm;

(b) On 28 August 1997, the Talas municipal court sentenced:

(i) Baktybek Itkarovich Osmonbekov, head of the Talas remand centre, to three years' deprivation of liberty under article 178, part 2, and article 182 of the Criminal Code;

(ii) Mukhtar Orozbekovich Salymaev, police officer, to three years' deprivation of liberty under article 178, part 2, and article 182 of the Criminal Code;

(iii) Myrzaly Suerkulovich Chondiev, police officer, to two years' deprivation of liberty under article 178, part 2, of the Criminal Code;

(iv) Chynybek Bekkulievich Toktonaliev, police officer, to two years' deprivation of liberty and article 178, part 2, of the Criminal Code (On 17 February 1998, the Talas oblast court applied article 63 of the Criminal Code which came into force on 1 January 1998 to this officer, and his sentence was suspended for two years),

for having, on 18 November 1996, at the Talas remand centre, beaten two male detainees, S. Asylbekov and Sh. Kurashev, causing them slight physical injury.

Article 5

Subparagraph 1 (a)

36. Under the Kyrgyz Criminal Code, everyone who commits a crime within the territory of the Kyrgyz Republic is liable under Kyrgyz criminal law. Hence, pursuant to article 5 (Applicability of the criminal law to persons who commit a crime within the territory of the Kyrgyz Republic) of the Criminal Code,

> "(1) Everyone who commits a crime within the territory of the Kyrgyz Republic shall incur liability pursuant to the present Code.
>
> (2) In the event of the commission of a crime within the territory of another State, liability shall arise under the present Code if the crime is concluded or suppressed within the territory of the Kyrgyz Republic."

Notwithstanding the absence of direct references to the matter in domestic law, Kyrgyzstan proceeds in practice from the premise that aircraft outside its borders that are registered at airports in Kyrgyzstan are subject to the criminal jurisdiction of the flag State.

Subparagraph 1 (b)

37. Citizens of the Kyrgyz Republic who commit crimes outside the country may be liable under Kyrgyz criminal law and tried in Kyrgyzstan. That rule is set out in article 6 (Applicability of the criminal law to persons who commit a crime outside the territory of the Kyrgyz Republic) of the Criminal Code:

> "(1) Citizens of the Kyrgyz Republic and stateless persons permanently resident in the Kyrgyz Republic who commit a crime outside the territory of the Kyrgyz Republic shall be liable under the present Code unless sentence has been passed upon them by a court in another State.
>
> Citizens of the Kyrgyz Republic who commit a crime within the territory of another State shall not be extraditable to that State.
>
> Aliens and stateless persons who, after having committed a crime outside the Kyrgyz Republic, are within the territory of the Republic shall be extraditable to the foreign State as international agreement provides for the purposes of prosecution or the serving of a sentence."

Subparagraph 1 (c)

38. There is no rule in Kyrgyz law providing for the Kyrgyz Republic to have criminal jurisdiction in cases where an offence has been committed outside the country against a Kyrgyz citizen's life, health, honour, dignity or other rights or lawful interests.

Paragraph 2

39. Aliens who, after having committed a crime outside the Kyrgyz Republic, are within the territory of the Republic are extraditable to a foreign State as international agreement provides. That is provided for in article 6 (Applicability of the criminal law to persons who commit a crime outside the territory of the Kyrgyz Republic) of the Criminal Code:

> "(1) Citizens of the Kyrgyz Republic and stateless persons permanently resident in the Kyrgyz Republic who commit a crime outside the territory of the Kyrgyz Republic shall be liable under the present Code unless sentence has been passed upon them by a court in another State.
>
> "Citizens of the Kyrgyz Republic who commit a crime within the territory of another State shall not be extraditable to that State.
>
> "Aliens and stateless persons who, after having committed a crime outside the Kyrgyz Republic, are within the territory of the Republic shall be extraditable to the foreign State as international agreement provides for the purposes of prosecution or the serving of a sentence."

Article 6

40. Depending on the nature of the offence constituting cruel, inhuman or degrading treatment, the offender may be liable to criminal, administrative or disciplinary measures. Criminal proceedings are conducted by the internal affairs authorities, the procurator's office and a court, which gives the final decision.

41. Wherever in the Republic the crime may have been committed, criminal proceedings shall be conducted in accordance with the Code of Criminal Procedure of the Kyrgyz Republic. The trial jurisdiction of the Republic extends to citizens of Kyrgyzstan, aliens (other than persons having diplomatic immunity) and stateless persons (Code of Criminal Procedure, arts. 3 and 26).

42. Procurators, investigators and initial-inquiry authorities are obliged, each within their own sphere of competence, to instigate criminal proceedings whenever indicia of a crime is detected and to take all the measures provided for by law to establish the details of the crime, to identify the guilty parties and to punish them (ibid., art. 4). The crimes covered by articles 305, 324 and 325 of the Criminal Code must be investigated by investigators from the law-enforcement agencies that instigated the proceedings (Code of Criminal Procedure, art. 115). Accordingly, they are subject during the investigations to the obligations referred to in article 4 of the Code of Criminal Procedure. Those obligations include the placing of the accused in custody, subject to a procurator's approval (ibid., art. 83), or the taking of other measures of restraint to ensure that the possible offender does not evade the investigation or trial (ibid., art. 75).

43. Aliens and stateless persons who have committed crimes outside Kyrgyzstan but are within the country's territory may be extradited to a foreign State.

44. Persons suspected or accused of a crime may, subject to time limits, be held in custody attending a judicial decision. Such custody is governed by the Regulations on Procedure for Short-term Detention of Persons Suspected of a Crime and the Regulations on Pre-trial Detention. Neither of those instruments contains any provisions permitting the humiliation or degradation of arrestees or detainees.

45. The regulation defining the penalties applicable to detainees for breach of the rules of the place of detention prohibits the use of measures aimed at causing physical suffering or humiliation.

46. Pursuant to article 12 of the Regulations on Pre-trial Detention, the authorities of a place of such detention may not grant detainees meetings with relatives or other persons without the permission of the person or body having jurisdiction over the case.

47. In addition, consular conventions between the Kyrgyz Republic and any other State establish the right of a consular official to visit and communicate with a citizen of the represented State sometime after that citizen's arrest or other form of detention.

Article 7

48. The Constitution of the Kyrgyz Republic provides in its article 15 that citizens are equal before the law and the courts.

49. The Code of Criminal Procedure provides in its article 15 (Administration of justice on the basis of the equality of citizens before the law and the courts) that "justice in criminal cases shall be administered on the basis of citizens' equality before the law and the courts irrespective of origin, social or property status, race, nationality, sex, education, language, attitude to religion, type or nature of occupation, place of residence or other circumstances".

50. Pursuant to article 21 (Comprehensive, full and objective investigation of the facts of the case) of the Code of Criminal Procedure, persons conducting initial inquiries or pretrial investigations, procurators and the courts are obliged to take all the measures provided for by law to ensure the comprehensive, full and objective investigation of the facts of cases and to identify the evidence, whether it incriminates or exonerates the suspect, the accused or the defendant, as well as any mitigating or aggravating circumstances.

51. Neither any person making an initial inquiry, nor an investigator, procurator or court, has the right to place the burden of proof on a suspect, accused person or defendant.

52. The extortion of testimony from a suspect, accused person or defendant by means of violence, threats or other unlawful measures is prohibited.

53. Under article 57 of the Code of Criminal Procedure, courts, procurators, investigators and persons conducting initial inquiries must weigh the evidence according to their conscience and on the basis of a comprehensive, full and objective examination, guided by the law, of all the facts of the case. For a court, procurator, investigator or person conducting an initial inquiry, no evidence may have previously established force.

54. With a few restrictions that are strictly regulated by laws and other instruments, persons serving a sentence of any kind have the obligations and enjoy the rights established by law for citizens of the Kyrgyz Republic. The lawful rights and interests of persons serving sentences are safeguarded by a whole range of economic, political and legal guarantees. Among the legal guarantees, the most important role is that assigned to the organs of the procurator's office, whose task it is to uncover and suppress breaches of the law.

55. If detainees in a place of pre-trial detention physically resist the establishment's officers, engage in unruly conduct or commit other violent acts, they may, in order to prevent harm to others or to themselves, be handcuffed or placed in a straitjacket.

56. Should a detainee in a place of pre-trial detention engage in an attack or other deliberate act that directly threatens the lives of the establishment's officers or others or escape from custody, weapons may be used as an exceptional measure if there is no other means of halting the conduct in question. Weapons may not be used in the event of an escape by women or minors. The authorities of places of pre-trial detention must immediately report each case of the use of weapons to a procurator.

57. The authorities of places of pre-trial detention may impose the following penalties on detainees who breach the establishments' rules:

A warning or reprimand;

Extra cleaning duty.

Detainees in a place of pre-trial detention who persistently break the establishment's rules may, subject to a substantiated decision by its chief officer, be placed in a punishment cell for up to 10 days, or 5 days in the case of a minor. Application of this punishment to pregnant women or to women who have children with them is prohibited. Punishments applied to detainees in places of pre-trial detention must be consistent with the seriousness and nature of the conduct in question. Measures aimed at causing detainees physical suffering or degrading them are prohibited.

58. Complaints, petitions and letters written by detainees in places of pre-trial detention may be examined by the authorities of the establishment in question. Complaints, petitions or letters addressed to a procurator may not be so examined and they must be sent to the addressee within 24 hours of being presented.

59. The law on criminal procedure requires the authorities of places of pre-trial detention to forward complaints about the actions of persons

conducting an initial inquiry or investigators to a procurator within three days of their being presented. Complaints about a procurator's acts or decisions must be forwarded to a higher procurator.

60. The authorities of places of pre-trial detention must forward other complaints, petitions or letters connected with criminal proceedings to the person or organ in charge of the case within three days of their being presented. They may then be examined by the said person or organ and must be sent on to the relevant authority within three days of their receipt. Complaints, petitions and letters containing information the disclosure of which might impede the establishment of the truth in a criminal case are not to be sent on to the relevant authority; in such an instance, both the detainee and the procurator must be informed.

61. Complaints, petitions or letters not connected with criminal proceedings may, as appropriate, be examined by the authorities of the place of pre-trial detention or forwarded to the relevant authority in the manner provided for by law.

62. Making conditions of detention more severe as a means of punishment is possible only in full accordance with the law. Neither pregnant women nor women who have babies with them may be housed in a punishment unit or in cell-like accommodation or, when serving a sentence in a prison, be placed in a punishment cell or under the more strict rules of incarceration.

Article 8

63. There are no lists of extraditable offences in the bilateral treaties on extradition to which the Kyrgyz Republic is a party. The range of extraditable offences depends on the penalties that courts are authorized to impose under the contracting parties' laws. As a rule, that means a sentence of deprivation of liberty for more than one year or a severer penalty. The penalties imposable under articles 305, 324 and 325 of the Kyrgyz Criminal Code show that the offences to which those articles refer are extraditable.

64. By way of example, a total of seven treaties on judicial assistance and judicial relations in civil, family and criminal cases that regulate extradition procedure has been concluded with the Russian Federation, Uzbekistan and Latvia. Treaties on the extradition and prosecution of criminals have been concluded with Kazakhstan, the Chinese People's Republic and Azerbaijan; they also apply to the articles of the Kyrgyz Criminal Code mentioned in the section of this report dealing with article 4 of the Convention. And, as stated above, extradition procedure is also governed by the CIS Minsk Convention on Judicial Assistance and Judicial Relations in Civil, Family and Criminal Cases of 22 January 1993.

65. To date, there has been no instance of implementation of any of the provisions of the above treaties in connection with article 8 of the Convention, since there have not been any requests to Kyrgyzstan for the extradition of persons accused of torture.

Article 9

66. Judicial assistance by foreign States in criminal cases, including cases connected with the acts enumerated in article 4 of the Convention, is provided in accordance with the international agreements concluded by Kyrgyzstan. There have been no instances of extradition by foreign States of persons prosecuted under articles 305, 324 or 325 of the Kyrgyz Criminal Code.

Article 10

67. Among the conditions for compliance in practice with the Convention is the existence of a system for training law-enforcement officials, instructors and medical personnel having to do with the detention and/or questioning of persons subjected to any form of arrest, pre-trial detention or formal incarceration. The syllabuses at legal and medical training establishments for law-enforcement officials and the staff of prison-service medical and psychiatric institutions include instruction on compliance with the law and with the rules for the treatment of parties to criminal proceedings. Basic instruction in the law is provided in virtually all educational establishments.

68. All students in the law faculties of the Kyrgyz State National University and the Kyrgyz-Russian Slavonic University, as well as all students at the Ministry of Internal Affairs' Bishkek Police College studying law applicable to custody, questioning and treatment of arrestees or detainees also study, as a compulsory topic, citizens' constitutional rights and the provisions of the Universal Declaration of Human Rights. In all syllabuses, emphasis is placed on the need to treat everyone as an individual, with humanity and respect, and to observe the law in all action. These matters are also dealt within courses on criminal law, criminal trials, criminology, administrative law, administration and criminalistics. In the criminalistics syllabus, for example, they are covered under the headings of "Search and seizure tactics", "Interrogation tactics", "Detention tactics", etc.

69. Rules on the humane treatment of offenders appear in Kyrgyz criminal law, law on criminal procedure and corrective-labour law. They are reflected in detail in internal orders and instructions of the Office of the Procurator-General, the Ministry of Internal Affairs and the Ministry of National Security. Both the statutory provisions and the internal instruments prohibit the commission by officials of acts of the kind referred to in article 1 of the Convention and a permanent watch is kept on compliance with them.

70. Regarding medical personnel, special training is provided in the Medical Academy's schools of forensic medicine and human pathology. There are also regular refresher courses for court doctors and pathologists.

Article 11

71. Kyrgyz law provides for compliance with article 11 of the Convention through the implementation of the Procurator's Office of the Kyrgyz Republic Act, especially chapter 2 (Supervision of compliance with the law by bodies carrying out searches, initial inquiries and other forms of preliminary

investigation) and chapter 4 (Supervision of compliance with the law in places of short-term detention or pre-trial detention in connection with the execution of penalties and other court-ordered coercive measures). Article 23 of this Act provides that supervision of investigatory authorities' application of the law shall cover: procedure for the clearance of statements and communications concerning crimes; conduct of searches and investigations, and the legality of such authorities' decisions.

72. The existence of a unit of the Procurator's Office that specializes in supervising compliance with the law in corrective-labour institutions is a further important guarantee of procuratorial verification of satisfaction of the requirements of the Convention. The unit in question monitors:

> The lawfulness of people's presence in places of short-term detention or of pre-trial detention in connection with the execution of penalties and other court-ordered coercive measures;
>
> Observance of the procedure and conditions laid down in corrective-labour law for detention in corrective-labour institutions (Procurator's Office of the Kyrgyz Republic Act, art. 31).

73. Rules on the humane treatment of offenders appear in Kyrgyz criminal, criminal-procedure and corrective-labour law. They are reflected in detail in orders, instructions and guidelines from the plenary meetings of the Supreme Court and the Procurator's Office, as well as in the syllabuses and materials for the training of law-enforcement officials. They prohibit the commission by officials of acts of the kind referred to in article 1 of the Convention. The courts, the Procurator's Office and government departments keep a constant watch on compliance with them.

74. The lawful rights and interests of persons serving penal sentences are safeguarded by a package of political and legal guarantees. Among the legal guarantees, the most important role is played by the organs of the Procurator's Office, whose task it is to detect and eliminate breaches of the law.

75. The following are entitled to inspect places of deprivation of liberty: the Minister for Internal Affairs, the head of the Chief Directorate for the Execution of Penalties, the heads of the main parts of that Directorate, and their deputies. Officials of the Chief Directorate for the Execution of Penalties are entitled to verify the activities of corrective-labour institutions in the context of missions authorized by the persons mentioned above.

76. Convicted persons' right to file complaints with government and social bodies is an important means of protecting the rights of the person. It is enshrined in the fundamentals of corrective-labour law (art. 50) and in the rules for the running of corrective-labour institutions. Convicted persons may submit proposals, complaints and applications to government agencies, social organizations and public officials. Applications addressed to a procurator are not subject to inspection by the authorities of places of detention and must be forwarded to the addressee within 24 hours. Complaints submitted to a procurator must be investigated within a month (Procurator's

Office of the Kyrgyz Republic Act, art. 5). Responses concerning the results of examination of convicted persons' proposals, applications or complaints must be communicated to the convicted persons concerned against a receipt upon arrival or within a maximum of three days and must be included in the convicted persons' case files.

Article 12

77. Discharge of these requirements of the Convention derives from the criminal justice system's tasks of rapidly and fully uncovering crimes and identifying the culprits and law-enforcement agencies' obligations within their respective spheres of competence to: initiate criminal proceedings each time the indicia of a crime are discovered; take all the measures provided for by law to determine the facts of the case and identify and punish the guilty parties; make comprehensive, full and objective investigations of the circumstances of cases (Code of Criminal Procedure, art. 21). Article 2 (Tasks of the criminal justice system) of the Code of Criminal Procedure provides that the tasks of the criminal justice system are to uncover crimes rapidly and fully, to identify the culprits and to ensure the proper application of the law so that everyone who commits a crime is subjected to fair punishment and no innocent person is prosecuted or convicted.

78. Pursuant to the Code of Criminal Procedure, the bodies competent to conduct preliminary investigations into criminal offences are: the organs of the Procurator's Office, the national security authorities, the internal affairs authorities, and the tax and customs authorities. The procedure for such investigations is also governed by the Code of Criminal Procedure.

79. The national security authorities can initiate proceedings and carry out criminal investigations in relation to matters over which they have competence under current law. The suspects and accused persons in such cases may be held in Ministry of National Security remand centres. The Instructions for the running of such centres preclude the use against detainees of any form of torture or other cruel, inhuman or degrading treatment or punishment.

80. Information bulletins from Kyrgyz non-governmental organizations and a number of international non-governmental organizations have spoken of cases in which persons accused of criminal offences were allegedly tortured. Checks and investigations have been made and have failed to confirm those allegations. In particular, the following may be said concerning specific cases mentioned in those bulletins.

The case of Mr. O. Kogai

81. On 7 March 1997, the Investigations Unit of the Pervomaisky District Internal Affairs Department in Bishkek opened proceedings for theft of personal property to a value of 1,585 soms from Ms. A.K. Toktomusheva. Acting under article 426 of the Code of Criminal Procedure, officers from the said Department arrested Mr. Oleg Afanasevich Kogai on suspicion of the crime. Mr. Kogai subsequently complained to the procurator of the Pervomaisky District that during his arrest on 7 March 1997 he had been beaten by the head of the Pervomaisky District Internal Affairs Department, Mr. T. Azizov. Consequently, on 6 May 1997, the Bishkek Procurator's Office opened

proceedings against Mr. Azizov under article 177, part 2 (Abuse of authority or official position), and article 178, part 2 (Action ultra vires), of the Code of Criminal Procedure. The subsequent investigation having failed to confirm that Mr. Kogai had been beaten, the proceedings against Mr. Azizov were terminated on 15 January 1998 for lack of evidence.

The case of Mr. A. Ekimov

82. On 18 January 1996, Mr. A. Ekimov, Mr. U. Asanov and two unidentified persons, all of whom were passengers in a car belonging to Mr. Zh. Kapashev, attacked the vehicle owner and stole his car from him. On 20 April 1996, Mr. Ekimov and Mr. Asanov were charged under article 146, part 2 (Robbery), of the Code of Criminal Procedure. On 19 December 1997, the Bishkek City Court sentenced Mr. Ekimov to nine years' deprivation of liberty and Mr. Asanov to 12 years' deprivation of liberty to be served in a reinforced-regime corrective-labour colony. No proof of torture was found either during the investigations or during the trial.

The Dibirov case

83. Mr. O.E. Dibirov was prosecuted for the premeditated murder of Mr. Sh. Aslanov, who died at Bishkek City Hospital No. 4 on 19 April 1995 of injuries received. Proceedings in this case were initiated on 22 April 1995 under article 101 of the Criminal Code by S. Zaremba, an investigator from the Sokuluk District Department of Internal Affairs. On 12 April 1996, the Sokuluk District Court found Mr. Dibirov and his father, E. Dibirov, guilty of the crime referred to in article 101, part 2 (Premeditated grievous bodily harm), of the Criminal Code and sentenced them to nine and seven years' deprivation of liberty respectively.

84. On 21 May 1996, acting on a cassational appeal from the two men, the Chu Oblast Court overturned the Sokuluk District Court's verdict and sent the case back for further investigation. The case has been delayed by judicial red tape and has been sent back five times, on far-fetched grounds, for further investigation. The investigatory authorities have allowed the period of investigation and remand in custody to drag on for 10 months; the remaining 14 months of Mr. O. Dibirov's detention are attributable to the courts. The case is currently at the stage of court proceedings.

The case of Mr. K. Azimov

85. The Investigations Directorate of the Ministry of Internal Affairs has opened proceedings against and is investigating the case of Mr. K. Azimov, an investigator from the Pervomaisky District Internal Affairs Department, under article 305, part 2, of the Criminal Code. On 16 March 1998, Mr. Azimov, after receiving information concerning a Mr. V. Moiseev, exceeded his authority by holding Mr. Moiseev in the Pervomaisky District Internal Affairs Department from 16 to 25 March 1998 without initiating criminal proceedings. During the period in question, Mr. Azimov demanded that Mr. Moiseev sell him apartment No. 67 at 95a ulitsa Kievskaya, Bishkek, for $2,700 and threatened that otherwise he would open proceedings against Mr. Moiseev for theft and send him to a remand centre.

Article 13

86. There are a number of legal provisions that guarantee the implementation of article 13 of the Convention. Under criminal procedure law, anyone alleging that unlawful investigatory methods, including cruel treatment or torture, have been employed against him is entitled to submit a complaint (which may be either written or oral) to a procurator either directly or through a person who carried out the initial inquiry or the pre-trial investigation in his case. In the latter instance, the complaint, together with the explanations of the persons whose actions are protested, must be transmitted to the procurator within 24 hours. Pending the resolution of a complaint, the action complained of may be continued if the person conducting the initial inquiry or pre-trial investigation or the procurator, as the case may be, considers its termination unnecessary.

87. Article 204 (Resolution by a procurator of complaints) of the Code of Criminal Procedure provides that procurators must, within three days of receiving a complaint, resolve it and inform the author of the outcome. If a procurator rejects a complaint, he must explain why he considers it unfounded.

88. A procurator's decision on a complaint may be appealed to a higher procurator by a person conducting the initial inquiry or pre-trial investigation and by the complainant.

89. Complaints against a procurator's conduct of a pre-trial investigation or performance of other investigatory action must be submitted to a higher procurator in the manner and within the time limits specified in articles 203 and 204 of the Code of Criminal Procedure.

90. If, in the event of a complaint against the actions of an investigator, the investigator or the complainant disagrees with the procurator's decision, that decision may be appealed to a higher procurator (ibid., art. 205).

Article 14

91. The legal system ensures compliance with article 14 of the Convention concerning compensation of the victims of unlawful acts (torture, etc.). The law provides that, irrespective of the guilt of officials from the investigatory authorities, the Procurator's Office or the courts, full compensation shall be made for material and moral injury to the victims of torture and citizens who have been unlawfully prosecuted, remanded in custody or subjected to an administrative penalty in the form of short-term imprisonment or deduction of earnings. Article 44-1 of the Code of Criminal Procedure states that "it shall be compulsory for the organs of initial inquiry or pre-trial investigation, procurators and the courts to take the measures provided for by law to compensate for the injury caused to citizens by unlawful conviction, unlawful prosecution or unlawful remand in custody as a preventive measure".

92. In particular, article 41 (Obligation for organs of initial inquiry or pre-trial investigation, procurators and courts to take measures to compensate for the injury caused to citizens by unlawful acts) of the above Code provides that, when criminal proceedings are terminated because of a finding that no

offence was committed or that the acts complained of were not serious enough to constitute a crime, because there is insufficient evidence that a person participated in a crime or upon a judgement of acquittal, organs of initial inquiry or pre-trial investigation, procurators or the courts must explain to the citizen concerned the procedure for the restoration of those of his rights which have been infringed and take the measures provided for in law to compensate him for the injury caused by unlawful conviction, unlawful prosecution or unlawful remand in custody as a preventive measure.

93. The law provides that, in the event of a citizen's death, the right to compensation passes to his heirs.

Article 15

94. The categorical ban on the obtaining of testimony from the accused or other parties to a case by means of violence, threats or other unlawful measures deprives testimony so obtained of all evidentiary value except in the event of its use against perpetrators of the said unlawful acts. A verdict based on evidence obtained in any of the above ways is repealable on the grounds of substantial violation of criminal-procedure law (Constitution, art. 89; Code of Criminal Procedure, art. 345).

95. Accordingly, pursuant to article 21 (Comprehensive, full and objective investigation of the facts of the case) of the Code of Criminal Procedure, persons conducting initial inquiries or pre-trial investigations, procurators and the courts are obliged to take all the measures provided for by law to ensure the comprehensive, full and objective investigation of the facts of cases and to identify the evidence, whether it incriminates or exonerates the suspect, the accused or the defendant, as well as any mitigating or aggravating circumstances.

96. Neither persons conducting initial inquiries or pre-trial investigations, nor procurators or courts may place the burden of proof on a suspect, accused person or defendant.

97. Obtaining testimony from a suspect, accused person or defendant by means of violence, threats or other unlawful measures is prohibited.

Article 16

98. Both Kyrgyz law itself and its application in practice are fully aimed at preventing other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 of the Convention.

99. The references in the preceding paragraphs of this report have been not only to torture, but also, where appropriate, to acts which, without being torture in the full sense of the term, can be considered cruel, inhuman or degrading treatment or punishment.

100. The Government is doing everything possible to ensure that everyone performing an official function acts in accordance with the principle of the primacy of the law. To that end, it has adopted a series of measures aimed at preventing the occurrence of cruel treatment.

101. Any teacher in the education system who physically punishes a student is liable to the penalties provided for by law. Kyrgyz criminal law provides for punishment for cruelty (beatings, systematic or brutal violence) to children. There is also legal provision for disciplinary proceedings in the event of other forms of cruel treatment of children.

102. Information from agencies of the Ministry of Internal Affairs shows that there are instances of cruel treatment of children. Cases of improper upbringing or degrading treatment, including mental or physical violence, can be found in families, schools and other children's institutions. The evidence shows that, when they occur, children and adults alike are sometimes the victims of other forms of criminal behaviour as well.

103. Appropriate care is available in health-care institutions in cases of domestic trauma or physical injury or wounds. In recent years, "Marriage and the Family" centres in Bishkek and Osh have begun to offer the services of specialized psychologists for the medical and social rehabilitation of women who have been subjected to violence or punishment.

104. Medical staff participate in investigating allegations of torture only at the invitation of the legal authorities or the request of victims or their relatives.

105. Like other crimes against the person, torture and systematic or brutal violence representing a threat to society have yet to be fully eradicated in Kyrgyzstan. Because some officials do not fully appreciate the importance of the rule of law and are not themselves of the best quality, systematic or brutal violence does still occur in some places. The Government is very attentive to this issue and is taking steps to remedy the situation. On the one hand, it is ensuring that the law is more widely studied by officials, and on the other it is improving its own systems for monitoring and procuratorial supervision so that everyone guilty of such violence, whatever their status or purpose, is, once unmasked, punished in accordance with the law. Furthermore, in addition to the various legislative, judicial and administrative measures to prevent such violence, it makes full use of the restraining role of the mass media by involving periodicals, newspapers, magazines, radio and television and other media in uncovering and criticizing unlawful acts. By referring to actual events, it warns the public about the consequences of systematic or brutal violence or other degrading treatment with a view to instilling in people a spirit of conscientious respect for the law.

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